

B-282057

March 2, 1999

The Honorable F. James Sensenbrenner, Jr.
Chairman, Committee on Science
House of Representatives

Subject: Environmental Protection: Employees Who Made Allegations and Left EPA

Dear Mr. Chairman:

The mission of the Environmental Protection Agency (EPA) is to protect human health and to safeguard the natural environment. EPA's purpose is to ensure that all Americans are protected from significant environmental health risks and that national efforts to reduce environmental risks are based on the best available scientific information. On June 10, 1998, The Washington Times published a letter from 20 individuals,¹ including EPA employees, alleging mismanagement by EPA and retaliation against whistleblowers. On January 29, 1999, we reported on the specific allegations of these individuals and instances of alleged whistleblower retaliation by the agency.² We further reported that some of the individuals were no longer working at EPA.

You requested that we provide additional information on three EPA employees who are no longer employed by EPA, two individuals who left EPA after working under either an interagency agreement appointment or for a grantee, and one individual who remains on EPA's payroll but has a 2-year assignment at a university. Specifically, you asked why the individuals had left and their current employment status.

RESULTS IN BRIEF

Six of the 20 individuals who sent the letter making allegations to the newspaper no longer work at EPA. Three of these individuals left as a condition of settlement agreements resolving complaints they filed against the agency. Another two individuals, who had been working under either an interagency agreement or under a grant, left when the interagency agreement appointment expired or when EPA no longer required the individual's services. Another individual was removed from his position for unacceptable work performance.

¹The Washington Times published the letter with 13 signatures. The original letter the newspaper received had 19 signatures. Six of the signatures were not published because the newspaper did not get permission from those individuals to print their names. The actual author of the letter was not among its signers but was considered for the purposes of this report to be the 20th individual involved.

²Environmental Protection: Allegations by EPA Employees (GAO/RCED-99-61R, Jan. 29, 1999).

For those individuals no longer working at EPA, as of February 1999, three are unemployed, one has found new employment working at a university teaching biological engineering, and the employment status of one employee is unknown. Another individual remains on EPA's payroll but has a 2-year assignment at a university and has agreed to resign or retire from the agency no later than May 2003.

BACKGROUND

The 20 individuals who sent the letter to The Washington Times alleged that EPA employees have been harassed and fired for criticizing EPA's enforcement of the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Air Act; the Safe Drinking Water Act; and other environmental statutes. The individuals alleged that retaliation against whistleblowers occurs at every management level and is supported throughout EPA. Additionally, the letter stated that even if whistleblowers' claims are substantiated, whistleblowers are fired or their careers are "dead-ended" and that the agency employees carrying out the retaliation are rewarded.

Employees who believe they have been retaliated against by an employer, including EPA, for whistleblower activities related to the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Air Act; the Safe Drinking Water Act; the Federal Water Pollution Control Act; the Solid Waste Disposal Act; and the Toxic Substances Control Act may file a complaint with the Secretary of Labor under employee protection provisions contained in these laws. Complaints filed under these environmental laws are reviewed by an Occupational Safety and Health Administration investigator.³ If the investigator determines that retaliation has occurred, the Occupational Safety and Health Administration may order corrective actions. Unless the Occupational Safety and Health Administration's findings and remedy are appealed, the order becomes a final order of the Secretary of Labor. However, either party may request a hearing before a Department of Labor administrative law judge. If a hearing is requested, any findings made by the Occupational Safety and Health Administration are given no legal effect, and a new review of the complaint is begun. Recommended decisions and orders issued by the administrative law judges may be appealed to the Department of Labor Administrative Review Board and, after that, to the United States court of appeals for the circuit in which the alleged discrimination occurred. The employee and the employer, such as EPA, may agree to settle the complaint at any time and reach a settlement agreement. A condition of these agreements may be that either party shall not disclose the terms of the agreements.

During the time between the publication of the letter in The Washington Times in June 1998 and our review in February 1999, 6 of the 20 employees who sent the letter were no longer working at EPA. Five of these individuals had filed complaints; one had not. The specifics of these whistleblower complaints are contained in our prior report.⁴

REASONS INDIVIDUALS LEFT AND THEIR EMPLOYMENT STATUS

³The Occupational Safety and Health Administration is an agency within the Department of Labor. Prior to February 3, 1997, these matters were investigated by the Department of Labor's Wage and Hour Division.

⁴GAO/RCED-99-61R, Jan. 29, 1999.

The six individuals no longer working at EPA left for three reasons: (1) three left as a condition of a settlement agreement resolving complaints they filed against the agency; (2) one left because his employment agreement had expired, and one left because the work she was doing was no longer needed; and (3) one employee was removed from his position for unacceptable work performance. Three of these six individuals were unemployed as of February 1999, a fourth individual was working at a university teaching biological engineering, and a fifth individual was on a 2-year assignment at a university. We were unable to contact the sixth individual to determine his employment status. The specific reasons the individuals left are contained in the enclosure to this report, but a brief summary follows:

- One employee did not leave EPA's payroll but, as part of a settlement agreement, voluntarily began a 2-year assignment at the University of Georgia in December 1998. He had been an employee at EPA's laboratory in Athens, Georgia, and had filed a complaint against the agency for retaliation for whistleblower activities. (He is identified as individual 1 in our prior report and in the enclosure to this report.)
- One employee of EPA's Region VIII office in Denver, Colorado, left in November 1998 as part of a settlement agreement. He stated that he felt he had no future at EPA with people he could not trust. He is currently unemployed. (He is identified as individual 3 in our prior report and in the enclosure to this report.)
- Another EPA Region VIII employee left in September 1998 as part of a settlement agreement after he filed a discrimination complaint against the agency. He and the agency agreed not to disclose the terms of the agreement, and we were unable to determine his employment status. (He is identified as individual 10 in our prior report and in the enclosure to this report.)
- An individual who was working for a contractor at EPA's laboratory in Athens had his appointment to a 3-year position expired in July 1998. Such appointments cannot exceed 3 years. The individual was working at the University of Georgia in February 1999. (He is identified as individual 7 in our prior report and in the enclosure to this report.)
- Another individual had been working for a grantee in EPA Region VIII through an agreement between EPA and a nonprofit center that employs older workers. The individual stated that EPA terminated her employment for whistleblower activities and hired a full-time employee to replace her. According to EPA, the individual's agreement with the center was not renewed because her duties were no longer required and funds were unavailable. (She is identified as individual 17 in the enclosure to this report.)
- One other individual had been an EPA Region VIII employee and was removed from his position in January 1999 for unacceptable work performance. He was unemployed as of February 1999. (He is identified as individual 11 in our prior report and in the enclosure to this report.)

AGENCY COMMENTS

We provided a draft of this report to EPA for review and comment. The agency generally agreed that the report provided a good characterization of the circumstances surrounding the six individuals who left EPA after sending the letter to The Washington Times. EPA suggested some editorial changes to the report to help ensure that the information on the six individuals was accurate, and we incorporated the agency's comments as appropriate.

SCOPE AND METHODOLOGY

To obtain information on why the individuals left EPA and their current employment status, we interviewed all of the individuals, except for one we were unable to contact. We also obtained

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documents and comments from EPA on why the individuals left the agency, and we included this information in the enclosure to this report.

We conducted our review from November 1998 through February 1999 in accordance with generally accepted government auditing standards.

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We are sending copies of this report to the appropriate congressional committees; interested Members of Congress; the Administrator of EPA; and other interested parties. We will also make copies available on request.

Please call me at (202) 512-6111 if you or your staff have any questions. Major contributors to this report were Doreen S. Feldman, Hamilton C. Greene, Robert E. Lippencott, Everett O. Pace, Rosemary Torres-Lerma, and John A. Wanska.

Sincerely yours,

Peter F. Guerrero
Director, Environmental
Protection Issues

Enclosure

REASONS INDIVIDUALS LEFT EPA

This enclosure lists the reasons six individuals left the Environmental Protection Agency (EPA) after sending a letter critical of the agency to The Washington Times. The letter to the newspaper was published in June 1998; the six individuals had left the agency by the end of January 1999.

The individuals are identified by numbers that are the same as those used in our report, Environmental Protection: Allegations by EPA Employees (GAO/RCED-99-61R, Jan. 29, 1999). The reasons the individuals left are organized and presented in three categories:

- Three individuals left as a condition of settlement agreements resolving complaints they filed against the agency. (See table I.1.)
- Two individuals left when either an interagency agreement appointment expired or when the services they were performing were no longer required. (See table I.2.)
- One individual was removed from his position for unacceptable work performance. (See table I.3.)

Table I.1: Individuals Who Left as a Condition of Settlement Agreements

Reason employee left EPA		Curre
Employee's account	EPA's account	
Individual 1, an EPA employee in Athens, Ga., filed a complaint with the Occupational Safety and Health Administration after his promotion was denied. In negotiating a settlement with EPA during the investigation of his complaint, he proposed to leave EPA, a condition that was subsequently part of a settlement with EPA. Individual 1 did not leave EPA. However, this individual has been assigned to an Intergovernmental Personnel Act assignment at the University of Georgia.	As settlement, the individual agreed (1) to withdraw the complaint, (2) to the previous findings of the Occupational Safety and Health Administration being moot and without effect, (3) to take a 2-year Intergovernmental Personnel Act assignment at the University of Georgia, (4) to resign or retire no later than May 28, 2003, and (5) to generally limit his university work to pathogen contamination of medical or dental devices. EPA agreed (1) to pay 100 percent of the individual's salary and benefits while he is on the assignment, (2) to consider an extension of the assignment beyond the original 2-year period, and (3) to pay \$25,000 in attorney fees	The ind Univers

	and costs. On January 5, 1999, the Office of Administrative Law Judges approved the settlement.	
Individual 3, an EPA employee in Region VIII, Denver, Colo., resigned from EPA on November 7, 1998. According to individual 3, he felt that he had no future at EPA with people he could not trust. He resigned because he believed he was a victim of many violations of the law. For example, individual 3 stated that EPA's Inspector General conducted a criminal investigation against him and that the Inspector General's agent in charge of the investigation was very aggressive and committed illegal acts, including harassment, changing testimony, and omitting information favorable to the employee from the Inspector General's report. He also stated that the EPA official who allegedly helped bring the charges against him gave false statements to the Inspector General.	As settlement of a complaint filed by the individual with the Department of Labor, Office of Administrative Law Judges, the individual agreed to (1) withdraw the complaint and (2) to resign his position as an environmental scientist no later than November 7, 1998. EPA agreed to (1) make a lump sum payment to the individual and his counsel in the amount of \$100,000 and (2) provide him with a mutually acceptable letter of employment reference.	Accordi his optic most of doctora
Individual 10, an EPA employee in Region VIII, Denver, resigned from EPA on September 30, 1998. On March 3, 1998, the individual filed a complaint of discrimination with EPA. The individual ultimately withdrew that complaint when he resigned from EPA.	The individual resigned from EPA on September 30, 1998, in accordance with a settlement agreement between EPA and the individual. Both parties to the settlement agreed to not divulge the terms of the agreement in any manner.	The cur

Table I.2: Individuals Who Left When Their Interagency Agreement Appointment Ended or When Services They Were Performing Were No Longer Needed

Reason employee left EPA		Current status
Employee's account	EPA's account	
Individual 7 was an employee of the Oak Ridge Institute for Science and Engineering, a Department of Energy program that is operated by a contractor. EPA has an Interagency Agreement with the Department of Energy whereby Institute employees work at EPA's Ecosystems Research Division in Athens, Ga. Individual 7 had a 3-year appointment to the Institute, effective August 1, 1995, and ending on July 31, 1998. When the individual's 3-year appointment with EPA ended, he left EPA.	EPA stated that an individual's appointment to the Oak Ridge Institute for Science and Engineering program is renewed on an yearly basis, with extensions based on the status of a participant's training and the availability of funds. However, according to EPA, appointments cannot exceed 3 years, and the individual's appointment ended on July 31, 1998.	The individual is a biological engineer
Individual 17 did not file a whistleblower complaint but left EPA. The individual had an agreement with EPA through the National Older Workers Career Center and was assigned to EPA in Region VIII, Denver, Colo., to perform clerical duties (mailing public notices and filing) for the Water Enforcement Program. The individual stated that EPA terminated her agreement on June 8, 1998, as retaliation for whistleblower activities. According to the individual, EPA hired a full-time EPA employee to replace her.	According to EPA, the individual's agreement was not renewed because of a regulatory change that resulted in her work no longer being required. (EPA's Water Enforcement Program is no longer required to issue the public notices the individual handled.) EPA stated that it did not hire a full-time EPA employee to replace the individual. EPA also stated that a lack of funds was another factor that contributed to the decision not to renew her agreement.	According to EPA, the individual is currently unemployed

Table I.3: Individual Who Was Removed for Unacceptable Performance

Reason employee left EPA		Current location
Employee's account	EPA's account	
On May 26, 1998, individual 11, an EPA employee in Region VIII, Denver, Colo., was placed on a Performance Improvement Plan because of an unsatisfactory rating. On November 16, 1998, the individual was notified that EPA proposed to remove him in 30 days because he failed to perform at the minimum level required for retention. The individual indicated on the notice that it was unjustified and was illegal retaliation. On January 15, 1999, the individual was removed for unacceptable work performance. On a prior complaint alleging retaliation, the Office of Special Counsel determined that the employee's complaint did not rise to the level of protected disclosure. The individual appealed the decision, and the appeal is currently under review by the Merit Systems Protection Board.	EPA agreed with the individual's account of why he left EPA, with the exception of the comment by the individual that the removal was unjustified and was illegal retaliation.	According to the individual's account, he is currently located in the same area as when he was removed.

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